

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF PUERTO RICO

5                   UNITED STATES OF AMERICA,

6                   Plaintiff

7                   v.

8                   BRYAN MULERO-RIVERA (23)

9                   Defendant

10                  CRIMINAL NO. 10-435 (PG)

11                  

12                  MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
13                  RE: AMENDMENT 782

14                  This is an initial determination as to eligibility for the drug reduction  
15 amendment promulgated by the United States Sentencing Commission under  
16 Amendment 782 to Policy Statement § 1B1.10(d).

17                  After careful review of the defendant's presentence report, charging  
18 document(s), plea agreement (if any), judgment and statement of reasons, I  
19 recommend as follows:

20                  [ X ] The defendant is not eligible for a sentence reduction based on the  
21 following factor(s):

22                  [ ] A. The guidelines range that applied in this case was  
23 not determined under one of the guidelines affected by  
24 the amendment (2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.8,  
25 2D1.10, 2D1.11, and 2D1.14), or the drug guideline was  
26 initially used but a cross reference to other guideline was  
27  
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3 triggered, resulting in a total offense level determined  
4 based on the cross referenced guideline.

5 [ X ] B. The defendant was sentenced to a statutory  
6 mandated minimum imprisonment term. The defendant  
7 did not comply with the safety valve provisions and did  
8 not receive a reduction of his or her imprisonment term  
9 based on a departure for substantial assistance or a Rule  
35 motion subsequent to the original sentence.

10 [ ] C. The defendant's final and total base offense level  
11 was derived from the career offender or the career criminal  
12 guideline.

13 [ ] D. The base offense level was 43 or 38 based on  
14 2D1.1(a)(1) or (2) as the defendant was convicted of a drug  
15 violation and the offense of conviction established that death or  
16 serious bodily injury resulted from the use of the substance and  
17 the defendant committed the offense after one or more prior  
convictions for a similar crime.

18 [ ] E. The base offense level was 12 or lower and the case  
19 involved heroin, cocaine, cocaine base, PCP,  
methamphetamine, amphetamine, LSD or fentanyl.

20 [ ] F. The base offense level was 8 or lower and the offense  
21 involved flunitrazepam.

22 [ ] G. The base offense level was 6 or lower and the offense  
23 involved marijuana, hashish, ketamine, Schedule I or II  
24 Depressants, Schedule III Hydrocodone, Schedule III Substances  
25 (other than Ketamine and Hydrocodone), Schedule IV Substances  
(except flunitrazepam), or Schedule V Substances.

26 [ ] H. The Court determined the base offense level by using either  
27 of the quantity tables at U.S.S.G. § 2D1.11 and the base offense level  
28 was 12 or lower.

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4 Since a determination of ineligibility has been made, the matter is formally  
5 submitted to the Presiding District Court Judge. The Federal Public Defender or  
6 Defense Counsel has 10 days to object to the initial assessment of ineligibility.  
7 After the 10-day period, and in the absence of an objection by defense counsel, the  
8 Presiding District Court Judge may rule on the motion for reduction of sentence and  
may adopt the recommendation of the Magistrate Judge.

9 [ ] The defendant **may be** eligible for a sentence reduction and therefore  
10 the matter is referred to a United States District Judge. (The Presiding Judicial  
11 Officer shall wait for the Parties' stipulation within 14 days, and if no stipulation is  
reached within this term, to await for the United States Probation Office, the  
12 Federal Public Defender and the Government's memoranda within 14 days  
thereafter).

13 I therefore recommend that the motion for reduction of sentence (Docket  
14 No. 2366) not be considered by the Court since the defendant is not eligible for  
15 sentence reduction since he received a minimum statutory sentence of 120 months.  
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17 At San Juan, Puerto Rico, this 13<sup>th</sup> day of November, 2015.

19  
20 S/JUSTO ARENAS  
United States Magistrate Judge  
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